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| UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY | |
| Caption in Compliance with D.N.J. LBR 9004-1(b) Bradford J. Sandler, Esq. Paul J. Labov, Esq. Colin R. Robinson, Esq. PACHULSKI STANG ZIEHL & JONES LLP 780 Third Avenue, 34 th Floor New York, NY 10017 Telephone: (212) 561-7700 Facsimile: (212) 561-7777 bsandler@pszjlaw.com plabov@pszjlaw.com crobinson@pszjlaw.com Peter O. Larsen (<i>pro hac vice</i> admission pending) Raye Elliott (<i>pro hac vice</i> admission pending) 50 North Laura Street, Suite 3100 Jacksonville, FL 32202 Telephone: (904) 798-3700 Facsimile: (904) 798-3730 peter.larsen@akerman.com raye.elliott@akerman.com <i>Counsel to the Plan Administrator</i> | |
| In re: 20230930-DK-BUTTERFLY-1, INC. f/k/a Bed Bath & Beyond, Inc., <i>et.al.</i> , Debtors. | Chapter 11 Case No. 23-13359(VFP) (Jointly Administered) |
| MICHAEL GOLDBERG, as Plan Administrator for 20230930-DK-BUTTERFLY-1, INC. f/k/a Bed Bath & Beyond, Inc., Plaintiff, v. U.S. CUSTOMS AND BORDER PROTECTION, an agency of the United States of America, Defendant. | Adversary Proceeding No. _____ |

COMPLAINT

Michael Goldberg, in his capacity as Plan Administrator (the “Plan Administrator” or “Plaintiff”) for 20230930-DK-Butterfly-1, Inc.¹ f/k/a Bed Bath and Beyond, Inc.² and affiliated debtors (the “Debtors”), by and through undersigned counsel, files this adversary complaint against Defendant, U.S. Customs and Border Protection (the “CBP”), part of the Department of Homeland Security, an agency of the United States of America, and alleges as follows:

Nature of the Action

1. The Plan Administrator brings this action against Defendant for turnover of certain overpayments of customs duties made by the Debtors to the CBP.

The Parties

2. The Plan Administrator is the sole representative of the Debtors and assumed responsibility for collecting assets of the bankruptcy estate, as more fully set forth in the Debtors’ confirmed Chapter 11 Plan as discussed below.

3. Defendant, CBP, is an agency of the United States of America.

Jurisdiction and Venue

4. The Court has jurisdiction to consider this matter under 28 U.S.C. §§ 157 and 1334, and 11 U.S.C. § 505(a).

5. This is a core proceeding under 28 U.S.C. § 157(b).

6. Venue of these chapter 11 cases and this adversary proceeding in this district and before this Court is proper under 28 U.S.C. §§ 1408 and 1409.

¹ Pursuant to the Certificate of Amendment of the Certificate of Incorporation of Bed Bath & Beyond, Inc. which was filed with the State of New York Department of State on September 21, 2023, the name of the entity formerly known as “Bed Bath & Beyond, Inc.” was changed to 20230930-DK-Butterfly, Inc.

² The last four digits of Debtor Bed Bath & Beyond, Inc.’s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtor’s claims and noticing agent at <https://restructuring.ra.kroll.com/bbby/>.

7. The statutory and legal predicates for relief requested by this Complaint are sections 105, 541, and 542 of title 11, United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 7001, *et. seq.*

Factual Background

A. General Case Background

8. On April 23, 2023, (the “Petition Date”), each of the Debtors commenced with this Court voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continued to operate their businesses and manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code until the Effective Date of the Plan (each, as defined below). No trustee or examiner has been appointed in this case.

9. On September 14, 2023 (the “Confirmation Date”), the Court entered the *Findings of Fact, Conclusions of Law, and Order (I) Approving the Disclosure Statement on a Final Basis and (II) Confirming the Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and its Debtor Affiliates* [Doc. 2172] (the “Confirmation Order”), confirming the *Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and Its Debtor Affiliates* [Doc. 2160] (as amended, the “Plan”).

10. On September 29, 2023, the effective date of the Plan occurred (the “Effective Date”). *See* Docket No. 2311. On the Effective Date, the Plan Administrator became the sole representative of the Debtors and assumed responsibility for, *inter alia*, investigating, prosecuting and compromising any and all of the Debtors’ claims and causes of action. *See, e.g.*, Plan at Art. IV.F, VII.A.

B. Overpayments to CBP

11. Prior to the commencement of these bankruptcy cases, the Debtors were leading retailers throughout the United States.

12. Pursuant to the Trade Act of 2002 and the Customs Modernization Act and 19 CFR Part 24, the Debtors, specifically Liberty Procurement, Inc. ("Liberty") as importer of record, regularly paid customs duties to CBP that were due and owing on the goods they imported into the United States through entries filed before CBP.

13. Prior to the Petition Date, Debtor, Liberty also submitted accelerated drawback claims pursuant to 19 CFR 191.92, for the refund of customs duties paid for entries eligible for drawback claims. ("Drawback Entries")

14. Despite Debtor having filed valid bonds to secure the accelerated drawback claims CBP demanded double-security for the Drawback Entries claimed by the Debtors. In lieu of returning funds owed to the Debtors from protests which CBP had approved in the Debtors' favor, CBP diverted those funds to doubly-secure the Drawback Entries and held those funds as security (the "Diverted Refunds"). CBP has been releasing the diverted funds periodically, but has retained the remaining \$1,040,233.48 (the "Overpayments").

15. More specifically, the Overpayments stem from the following Diverted Refunds that resulted from specific Protests, as follows:

- a. Protest No. 1703-21-113020 filed on May 24, 2021, and approved by CBP on July 24, 2023, regarding a total diverted refund of \$2,034.05 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666945846 | \$860.13 |
| 28666946190 | \$1,173.92 |
| Total | \$2,034.05 |

- b. Protest No. 1703-22-113799 filed on January 10, 2022, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$82,200.60 from the following

Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666967006 | \$10,823.39 |
| 28666968202 | \$6,568.13 |
| 28666975546 | \$4,692.77 |
| 28666975843 | \$9,852.74 |
| 28666975975 | \$4,691.49 |
| 28666977260 | \$4,687.65 |
| 28666977427 | \$17,526.62 |
| 28666977815 | \$5,830.55 |
| 28666978276 | \$17,527.26 |
| Total | \$82,200.60 |

- c. Protest No. 1703-23-115790 filed on June 29, 2023, and approved by CBP on August 10, 2023, regarding a total diverted refund of \$74,366.50 from the following

Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667112776 | \$6,162.66 |
| 28667113816 | \$1,191.46 |
| 28667115464 | \$2,767.40 |
| 28667115852 | \$1,198.69 |
| 28667116066 | \$1,840.20 |
| 28667116074 | \$1,488.39 |
| 28667116280 | \$3,079.32 |
| 28667116306 | \$3,045.07 |
| 28667116900 | \$3,985.64 |
| 28667117643 | \$1,581.83 |
| 28667117783 | \$17,686.62 |
| 28667118229 | \$954.77 |
| 28667118260 | \$723.96 |
| 28667118369 | \$1,459.94 |
| 28667118625 | \$2,134.99 |
| 28667119375 | \$920.24 |
| 28667119656 | \$1,496.15 |
| 28667120597 | \$429.03 |
| 28667122296 | \$1,373.65 |
| 28667122403 | \$2,578.47 |

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|--------------|--------------------|
| 28667122841 | \$5,164.41 |
| 28667123427 | \$3,018.98 |
| 28667123575 | \$254.59 |
| 28667124391 | \$1,006.60 |
| 28667124482 | \$2,160.12 |
| 28667125489 | \$426.36 |
| 28667126099 | \$2,011.59 |
| 28667126388 | \$1,376.86 |
| 28667127402 | \$1,357.85 |
| 28667129101 | \$1,490.66 |
| Total | \$74,366.50 |

- d. Protest No. 2704-21-158343 filed on November 1, 2021, and approved by CBP on July 21, 2023, regarding a total diverted refund of \$62,824.65 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666964359 | \$18,664.14 |
| 28666965745 | \$15,234.30 |
| 28666965893 | \$5,979.98 |
| 28666967717 | \$11,475.65 |
| 28666968392 | \$11,470.58 |
| Total | \$62,824.65 |

- e. Protest No. 2704-21-158823 filed on December 15, 2021, and approved on July 24, 2023, regarding a total diverted refund of \$55,611.55 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666961876 | \$7,604.32 |
| 28666964524 | \$14,047.96 |
| 28666975983 | \$11,347.38 |
| 28666978607 | \$11,303.01 |
| 28666979290 | \$11,308.88 |
| Total | \$55,611.55 |

- f. Protest No. 2704-22-160776 filed on June 14, 2022, and approved by CBP on August 8, 2023, regarding a total diverted refund of \$16,507.13 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666994984 | \$952.24 |
| 28667000203 | \$952.97 |
| 28667004577 | \$117.67 |
| 28667008693 | \$1,028.87 |
| 28667009287 | \$180.49 |
| 28667009303 | \$745.99 |
| 28667012257 | \$375.80 |
| 28667015292 | \$707.42 |
| 28667015532 | \$811.05 |
| 28667016829 | \$810.06 |
| 28667019427 | \$3,675.12 |
| 28667022355 | \$3,493.21 |
| 28667025697 | \$2,656.24 |
| Total | \$16,507.13 |

- g. Protest No. 2704-22-160943 filed on June 29, 2022, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$11,741.68 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667000393 | \$3,526.69 |
| 28667001250 | \$3,516.45 |
| 28667008180 | \$4,698.54 |
| Total | \$11,741.68 |

- h. Protest No. 2704-22-161923 filed on September 14, 2022, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$13,335.90 from the following Associated Entry Number:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667023411 | \$13,335.90 |
| Total | \$13,335.90 |

- i. Protest No. 2704-22-161978 filed on September 21, 2022, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$36,653.67 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667022348 | \$13,225.49 |

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|--------------|--------------------|
| 28667027925 | \$10,065.70 |
| 28667028311 | \$13,362.48 |
| Total | \$36,653.67 |

- j. Protest No. 2704-22-162218 filed on October 5, 2022, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$99,896.14 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667030242 | \$10,067.87 |
| 28667032859 | \$4,665.44 |
| 28667033162 | \$2,326.07 |
| 28667038385 | \$6,107.39 |
| 28667039490 | \$2,574.80 |
| 28667045968 | \$2,573.17 |
| 28667049754 | \$1,046.05 |
| 28667050869 | \$2,003.50 |
| 28667053152 | \$1,562.72 |
| 28667057344 | \$5,602.95 |
| 28667058235 | \$1,641.05 |
| 28667059043 | \$3,965.91 |
| 28667059258 | \$1,102.76 |
| 28667059274 | \$3,971.35 |
| 28667062070 | \$2,520.89 |
| 28667062708 | \$3,966.72 |
| 28667062963 | \$3,285.87 |
| 28667063086 | \$2,009.65 |
| 28667063094 | \$15,780.87 |
| 28667065206 | \$9,668.33 |
| 28667065230 | \$9,486.59 |
| Total | \$99,896.14 |

- k. Protest No. 2704-22-162371 filed on October 17, 2022, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$11,630.67 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667044060 | \$3,417.35 |
| 28667050406 | \$2,284.74 |
| 28667050505 | \$512.48 |
| 28667056478 | \$1,186.37 |

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|--------------|--------------------|
| 28667056676 | \$3,411.47 |
| 28667058227 | \$27.03 |
| 28667058938 | \$782.31 |
| 28667061619 | \$17.91 |
| Total | \$11,639.67 |

- l. Protest No. 2704-22-163233 filed on November 28, 2022, and approved by CBP on August 9, 2023, regarding a total diverted refund of \$92,117.39 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667064878 | \$2,572.67 |
| 28667065933 | \$2,151.75 |
| 28667066113 | \$3,276.43 |
| 28667066733 | \$1,810.65 |
| 28667066766 | \$18,113.82 |
| 28667067145 | \$1,991.05 |
| 28667067343 | \$5,948.87 |
| 28667067624 | \$1,021.95 |
| 28667067681 | \$1,090.98 |
| 28667069331 | \$1,768.05 |
| 28667069497 | \$8,001.93 |
| 28667069869 | \$1,982.96 |
| 28667070370 | \$4,032.24 |
| 28667070461 | \$2,294.93 |
| 28667071063 | \$4,140.91 |
| 28667071386 | \$2,289.27 |
| 28667071410 | \$4,714.71 |
| 28667071543 | \$2,261.23 |
| 28667072152 | \$987.97 |
| 28667072228 | \$866.63 |
| 28667072269 | \$1,112.82 |
| 28667072269 | \$17,324.84 |
| 28667073705 | \$2,360.73 |
| Total | \$92,117.39 |

- m. Protest No. 2704-22-163594 filed on December 15, 2022, and approved by CBP on August 8, 2023, regarding a total diverted refund of \$31,771.71 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667069588 | \$5,490.82 |
| 28667072806 | \$4,158.15 |
| 28667073002 | \$6,932.93 |
| 28667073069 | \$6,932.93 |
| 28667073853 | \$6,903.81 |
| 28667077490 | \$1,353.07 |
| Total | \$31,771.71 |

- n. Protest No. 2704-23-165252 filed on March 17, 2023, and approved by CBP on August 10, 2023, regarding a total diverted refund of \$59,125.52 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667082672 | \$1,951.28 |
| 28667083217 | \$4,268.49 |
| 28667083704 | \$3,607.66 |
| 28667085618 | \$6,602.38 |
| 28667085741 | \$1,120.67 |
| 28667086624 | \$1,059.39 |
| 28667086657 | \$3,548.45 |
| 28667086707 | \$1,175.27 |
| 28667086798 | \$1,199.25 |
| 28667087069 | \$1,962.85 |
| 28667088190 | \$1,049.90 |
| 28667089420 | \$759.85 |
| 28667089727 | \$1,964.19 |
| 28667090246 | \$1,561.45 |
| 28667092614 | \$583.88 |
| 28667092697 | \$6,051.33 |
| 28667094453 | \$4,222.68 |
| 28667095443 | \$1,562.52 |
| 28667096524 | \$1,852.30 |
| 28667098736 | \$2,803.03 |
| 28667099353 | \$5,708.39 |
| 28667099387 | \$3,253.69 |
| 28667099429 | \$1,256.62 |
| Total | \$59,125.52 |

- o. Protest No. 2704-23-167263 filed on July 14, 2023, and approved by CBP on August 9, 2023, regarding a total diverted refund of \$11,831.65 from the following

Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667122379 | \$2,513.59 |
| 28667123278 | \$1,255.20 |
| 28667123310 | \$2,513.59 |
| 28667136015 | \$2,791.91 |
| 28667164132 | \$2,757.36 |
| Total | \$11,831.65 |

- p. Protest No. 2704-21-104228 filed on September 28, 2021, and approved by CBP on July 26, 2023, regarding a total diverted refund of \$78,528.92 from the following

Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666949970 | \$16,294.47 |
| 28666950390 | \$7,816.67 |
| 28666950663 | \$9,690.64 |
| 28666950754 | \$9,679.69 |
| 28666953220 | \$10,339.34 |
| 28666954111 | \$7,656.85 |
| 28666954673 | \$17,051.26 |
| Total | \$78,528.92 |

- q. Protest No. 3001-21-104291 filed on December 27, 2021, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$42,486.89 from the following

Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28666963807 | \$13,166.20 |
| 28666964409 | \$5,383.79 |
| 28666965653 | \$10,803.09 |
| 28666965786 | \$13,133.81 |
| Total | \$42,486.89 |

- r. Protest No. 4601-22-132751 filed on November 30, 2022, and approved by CBP on August 9, 2023, regarding a total diverted refund of \$154,657.53 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667068572 | \$1,785.51 |
| 28667069216 | \$1,858.92 |
| 28667068448 | \$3,161.05 |
| 28667070008 | \$8,715.68 |
| 28667071394 | \$1,284.28 |
| 28667072848 | \$24,928.47 |
| 28667073309 | \$8,370.06 |
| 28667074117 | \$891.27 |
| 28667074331 | \$7,087.12 |
| 28667076047 | \$18,615.80 |
| 28667077813 | \$6,122.36 |
| 28667077847 | \$753.18 |
| 28667077862 | \$295.57 |
| 28667078092 | \$18,619.03 |
| 28667078506 | \$1,043.63 |
| 28667078563 | \$17,280.37 |
| 28667081484 | \$779.56 |
| 28667081591 | \$674.85 |
| 28667081609 | \$13,963.19 |
| 28667081625 | \$749.68 |
| 28667083399 | \$4,060.66 |
| 28667084322 | \$3,237.76 |
| 28667084595 | \$1,226.95 |
| 28667084702 | \$9,152.58 |
| Total | \$154,657.53 |

- s. Protest No. 4601-23-133285 filed on January 18, 2023, and approved by CBP on August 14, 2023, regarding a total diverted refund of \$2,493.09 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667074265 | \$6.59 |
| 28667080254 | \$1,182.09 |
| 28667085113 | \$6.56 |
| 28667085121 | \$6.84 |
| 28667089867 | \$17.84 |

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| 28667096342 | \$1,273.17 |
| Total | \$2,493.09 |

- t. Protest No. 4601-23-134589 filed on May 16, 2023, and approved by CBP on August 9, 2023, regarding a total diverted refund of \$82,706.37 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667090956 | \$1,998.83 |
| 28667092523 | \$801.09 |
| 28667093950 | \$539.41 |
| 28667095708 | \$759.84 |
| 28667096151 | \$2,398.17 |
| 28667096250 | \$1,738.23 |
| 28667096565 | \$1,553.43 |
| 28667099809 | \$18,228.65 |
| 28667101241 | \$3,429.95 |
| 28667102132 | \$5,096.84 |
| 28667103841 | \$2,476.37 |
| 28667104013 | \$967.94 |
| 28667104021 | \$1,683.59 |
| 28667104401 | \$693.15 |
| 28667104476 | \$1,335.14 |
| 28667104484 | \$2,052.93 |
| 28667105135 | \$733.59 |
| 28667106539 | \$740.29 |
| 28667106604 | \$739.75 |
| 28667106612 | \$1,446.29 |
| 28667109822 | \$19,986.70 |
| 28667112982 | \$1,676.29 |
| 28667113519 | \$5,423.60 |
| 28667113931 | \$927.74 |
| 28667114152 | \$1,484.81 |
| 28667114558 | \$503.31 |
| 28667114954 | \$2,367.34 |
| 28667116736 | \$923.99 |
| Total | \$82,706.37 |

- u. Protest No. 4601-23-134721 filed on June 1, 2023, and approved by CBP on August 7, 2023, regarding a total diverted refund of \$17,702.87 from the following Associated Entry Numbers:

| Associated Entry No. | Diverted Refund |
|-----------------------------|------------------------|
| 28667104385 | \$422.24 |
| 28667104443 | \$2,101.74 |
| 28667107818 | \$1,677.72 |
| 28667108105 | \$13,501.17 |
| Total | \$17,702.87 |

16. CBP remains in possession of the Overpayments.

17. CBP did not file a claim in this Bankruptcy Case and has not asserted in any manner that the Debtors owe any monies to CBP.

Count I
(Turnover of Property Pursuant to 11 U.S.C. § 542)

18. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 above as if fully set forth herein.

19. The CBP is in possession of the Overpayments.

20. The Overpayments are property of the Debtors' estate under § 541.

21. The Overpayments constitute debts that the CBP owes to the Debtors that are property of the estate and that are matured, payable on demand, or payable on order.

22. Accordingly, pursuant to § 542, the CBP should be compelled to immediately turn over and deliver to the Plaintiff the Overpayments in an amount not less than \$1,040,233.48 plus interest or such other amount determined to be due to the Debtors by the Court.

Prayer for Relief

WHEREFORE, Michael Goldberg, in his capacity as Plan Administrator respectfully requests and prays that the Court:

- i. Pursuant to Count I, enter judgment compelling the CBP to turn over the Overpayments plus interest;
- ii. Award Plaintiff costs, and expenses of this suit; and

iii. Grant the Plaintiff such other and further relief the Court deems just.

Dated: April 23, 2025

/s/ Colin R. Robinson

Bradford J. Sandler, Esq.

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